

HYMS Guidance Notes: The Role of the Investigating Officer – 2017/18

Please note: this guidance is predominantly focussed on investigations undertaken on behalf of the HYMS Case Management Group or HYMS Student Fitness to Practise Committee. However, investigations from time to time may be required for other reasons e.g. submission of a formal complaint; concerns raised regarding academic integrity and conduct. Therefore the guidance is intended to apply and be helpful in a diversity of situations and so remains open to on-going development throughout the year.

The Role of the Investigating Officer

The HYMS Code of Practice on Student Fitness to Practise (2016) which is available on the HYMS website, provides a detailed explanation of the Student Fitness to Practise process.

However based on the experience gained over the past few years and the feedback provided by Investigating Officers and subsequent Fitness to Practise Panels, this guidance serves to provide further support for this important role. In addition to the HYMS experience this guidance also draws on best practice across the sector and intends to clarify the requirements of this role to ensure a consistent and rigorous approach.

I. Before any investigation

An investigation can be undertaken on behalf of either the Case Management Group or Student Fitness to Practise Committee, the process of the investigation is similar for both.

The Case Management Group monitors and reports on all student issues including health, conduct and behaviour. Following consideration of individual student cases this Group may appoint an Investigating Officer to report on factual accuracy of the concerns raised and to gather additional information. The decision to refer to an Investigating Officer must be informed by a full discussion on the boundaries of the investigation, and there should be agreement on the list of questions/issues to be addressed by the investigation. The scope of any investigation should be discussed with the Investigating Officer and agreed so that there is clarity to the limits and extent of the investigation.

The Case Management Group shall refer the matter to an Investigating Officer and shall notify the student of:

- the details of the allegations against them
- the identity of the Investigating Officer
- the scope and focus of the investigation
- any suspension or limitation placed upon the continuance of their studies and/or clinical attachment during the period of the investigation if this is required.

2. Choosing the Investigating Officer

NOTE: The Investigating Officer should not be the student's current tutor, mentor, or supervisor.

The Investigating Officer is usually an academic member of staff (which includes HYMS honorary appointments within the NHS), a member of administrative staff of equivalent seniority, or a member of the HYMS Student Fitness to Practise Committee.

Other factors which will need to be taken into account include:

- whether any particular personal qualities or experience and expertise would be relevant
- the need to distribute workload across appropriately experienced and trained staff
- the likelihood of completing the investigation on a reasonable timescale

There are 2 potential time pressures i.e.

- the need to deal with the matter as quickly as possible without compromising on thoroughness and rigour; and
- the need to minimise the time a student must wait for the matter to be resolved. This must also take into account any consequences for the student's ability to progress and/or complete their studies

3. The Investigation

The Investigating Officer may request the following information from a number of different individuals connected with the case i.e.

- written comments on the student's conduct and/or health, explaining why there is concern as to the student's fitness to practise¹.
- factual information about the student's professional progress on the programme, including any correspondence relating to the behaviour or incident causing concern. The HYMS Student Support Office will normally provide all evidence already available in HYMS at the beginning of the investigation. However additional information and the need for further requests and/or other relevant documentation may become apparent as the investigation progresses.

The Investigating Officer shall interview the student and any other individuals relevant to the investigation.

The Investigating Officer does not make any decision about the case, their role is to record the evidence and its analysis, and on that basis to make recommendations to the Case Management Group/Student Fitness to Practise Committee

Points to Remember for the Investigating Officer:

- You must remain totally impartial throughout the investigation.
- Remember that at this stage these are allegations not proven fact.

¹ The student, in order that a report can be produced, may be required to be assessed by a suitably qualified Health Practitioner as appointed by the School for this purpose. A low threshold for mental health issues should be considered for the purposes of referral.

- You should keep in mind the balance between patient/service user and public safety, the overall interests of the student and the need to maintain trust in the profession.
- You must seek out the evidence to support the allegation(s).
- You will need to ascertain as much detail as possible, including a review of any incidents which have previously led to this investigation which may have already been resolved.
- You must interview the person making the allegation, the student and witnesses on both sides. The interviewees should be provided with at least three working days' notice and informed that they may be accompanied at the interview by a representative². The details of any accompanying representatives attending the interview should be shared with the Investigating Officer prior to the actual interview.
- It is helpful for the interviewer to prepare a list of questions in advance of each interview. Questions should usually be open and not leading. A question should not suggest any particular answer and should not convey the interviewer's own opinions.
- Any interview with the student and other parties should ideally be held face-to-face. Where this is not possible/practicable a telephone interview may be held but all records and summaries should be dealt with in the same way as if the interview was held face to face.
- A précis must be taken of any interview conducted as part of the investigative process (whether this is face to face, telephone/skype etc). This record should be signed and dated by the Investigating Officer and the interviewees (this may be done electronically via email agreement). This précis is a short summary account rather than a verbatim record of the interview.
- The investigator should appoint a notetaker so they can concentrate on listening and asking questions without also having to keep a record. By agreement an interview may be recorded, especially where detail may be important. The purpose of the notes taken at the interview is to provide an account that the interviewer and interviewee can agree on as a true record. These notes will be kept on file for reference and will be used as an aide memoire to assist the investigator in writing the summary account of the verbal evidence in the written report.
- For all staff members who are interviewed as part of the investigation, it is good practice to record a short summary of their role and contribution to the process, for example :
 - Name and duration of present post. and proportion of that time involving student teaching
 - Any special role within the education programme (e.g. interviewer of applicants to the programme, examiner, specific responsibility for part of the programme)

² This representative will normally be a member of student services, a colleague and/or other appropriate supporter. As this is a university matter legal representation is not considered necessary or appropriate.

- Date and/or time period of contact with the student, and information about that contact (e.g. NHS Consultant responsible for supervising a 6 week clinical placement, academic adviser for years 1-5 of the programme)
 - Stage of the programme when there was an interaction with the student
 - The interviewee should be asked to confirm whether there are any potential conflicts of interest
 - Details of the interviewee's experience and contact with the student, with dates and records e.g. emails sent to, or received from, the student, where possible.
 - Where possible, obtain specific examples of problems or behaviours seen/experienced by interviewee, with an explanation of why the behaviour was a problem and obtain information about what feedback, advice or warnings were given to the student.
- You should remind the student of the HYMS Conditions of Training document and reiterate the importance of honesty, accountability and integrity before starting the interview
 - Normally you should interview the student at the beginning of the process and then again as part of the last stage on the investigation, after you have collected evidence from other people. This second interview provides the student with the opportunity to respond to the comments of others, and to address any issues which have arisen as part of your investigation.
 - When interviewing the student you should ask if they are aware of anyone else who the student feels can provide evidence related to the incident(s).
 - As a check list the investigator should structure the interview:
 - Make sure the student understands what the concern being investigated is, and why it is being dealt with at this level of seriousness
 - Get the student to recount the incident in their own words
 - Discuss the information which emerges, taking into account other evidence, with the aim at getting agreement about the basic facts. There may then need to be further exploration about the behaviour involved and whether the student understands why it causes such concern
 - Find out from the student whether they think there is any relevant evidence you should seek (e.g. witness to speak to) before concluding the investigation
 - The investigating processes should be concluded as swiftly as possible. If it is looking likely that this process may be protracted then you must inform the Case Management Group/Student Fitness to Practise Committee.
 - After you have concluded all of the required interviews and collated appropriate evidence you must then prepare a formal written report of your findings.

4. The Investigating Officer's Report

Where appropriate the report should include positives about the student history and/or any relevant issues that should be brought to the attention of the Case Management Group.

The report will go initially to the Case Management Group/Student Fitness to Practise Committee who will consider whether further action is necessary. The report will also be shared with the student.

4.1 Report Structure

Throughout all reports the student should be referred to only by their UCAS number without using their name. Depending on the nature of the supporting evidence this may by its nature identify the student by name and therefore this should either be redacted or provided as a separate appendix³.

The report is likely to vary depending on the issues being explored and the complexity of the range of cases. However all reports will need to provide a record sufficient to provide the major source of evidence for significant decisions about a student's future, which in turn may be subject to scrutiny through an appeal process.

Therefore the proposed structure is as follows:

1. **Matter under investigation.** A clear statement of the allegation or concern passed to the investigator and why it is significant to the practice or study of medicine.
2. **List of evidence identified and used.** This should include a list of those interviewed, where and when. Written evidence (which by its nature is likely to identify the student by name) should be provided as an appendix to the report.
3. **Account of the factual investigation:** a description of the facts of the matter as revealed by the investigation. It is useful to keep this section confined to established fact (particularly that agreed by the student) with any matter of opinion clearly labelled as such.
4. **A chronological summary.** The chronology should not selectively include only adverse matters, but include data on all basic aspects including ones that are favourable to the student.
5. **Observations.** This is where the investigator summarises their thought processes in relation to what the facts mean in terms of the student's fitness to practise. It can highlight

³Part of the evidence in a fitness to practise case may be one or more emails and/or text messages. In cases where there are more than a small number of these, it is helpful to use some sort of system to identify and number each email and text message. In cases in which it is suspected that there has been misuse of University IT facilities or a suspected criminal offence involving the use of email (e.g. harassment of another student) the university IT department may be able to provide copies of incoming or outgoing emails from a student's account.

discrepancies, weak explanations, and the questions which emerge about the student's underlying insight and ability to make decisions about their own behaviour. The investigator is expressing an opinion, but provided that follows from the facts determined and there is no prejudice that is appropriate to do in this section.

6. Recommendation. It is important to distinguish between the role of the Investigating Officer and the role of any subsequent Fitness to Practise Hearing which may take place. The recommendations of the Investigating Officer will therefore be relatively short and may include proposals based on the evidence gathered there is :

- no basis for any further action
- evidence that remedial support or therapeutic action should be implemented to support the student
- the need for additional monitoring, supervision or appraisal for the student for a defined duration
- a case for a Fitness to Practise Panel to be held to explore the issues in more detail, and which also holds the powers to issue a Warning and/or Sanctions should the Panel decide these are appropriate and proportionate.

For investigations that involve applicants to the medical school, the recommendation of the Investigating Officer should indicate whether an offer of a place may be made or not made on fitness to practise grounds

7. For the attention of the School. When investigating concerns about a student, it is common for systems failures to come to light, and it is important that these are addressed in the investigator's report, as they may help to explain a student's actions and may provide important mitigation.

5. After the submission of the Investigating Officer report

Should there be a Hearing to consider the case further, it is likely that the investigator will be required to present the report and be prepared to answer questions put by the school and by the student and/or the student's representative. Having taken on the role of investigator and potentially case presenter, it is generally accepted that the investigator should not be invited to be a member of a decision making body (including the Student Fitness to Practise Committee and/or a Fitness to Practise Panel) concerning the case.

Feedback on the Investigating Officer Report and a short summary of the follow up action should be provided to inform the on-going development needs of this role and individual.

Useful Documents:-

HYMS Code of Practice on Student Fitness to Practise (<http://www.hyms.ac.uk/docs/default-source/codes-of-practice/code-of-practice-on-fitness-to-practise-medicine.pdf?sfvrsn=20>)

GMC: Professional behaviour and fitness to practise (http://www.gmc-uk.org/education/undergraduate/professional_behaviour.asp)

GMC: Achieving Good medical practice (http://www.gmc-uk.org/education/undergraduate/achieving_good_medical_practice.asp)